

## REMARKS

Claims 1-10 and 16 have been canceled without prejudice.

The examiner has objected to Claim 14, dependant from Claim 11, on the grounds that a surface smoothness specified as “approximately 0.01 nm”, given its broadest reasonable interpretation, encompasses a smoothness of 0.05 nm and thus does not further limit Claim 11. The examiner appears to ignore the law that the applicant is his own lexicographer. Claim 14 has been drafted to further limit the surface roughness claimed in Claim 11.

Moreover, the examiner has provided no basis for his asserted “broadest reasonable interpretation” of the claimed surface roughness. A roughness of 0.01 nm is only 20% of 0.05 nm. It is not reasonable to assert that term “approximately” modifies the value 0.01 nm so that it encompasses a value five times greater than 0.01 nm.

Reconsideration and withdrawal of the objection to Claim 14 is solicited.

Claims 11-14 stand rejected as obvious over the patent to Phillips (U.S. Patent No. 6,545,809) in view of the patent to Wagal (U.S. Patent No. 4,987,007). Claims 15 and 16 stand rejected as obvious over Phillips and Wagal further in view of the patent to Wolfe (U.S. Patent No. 5,377,045).

The examiner concedes that no reference discloses an optical filter having a diamond-like carbon layer with the claimed surface roughness. The examiner appears to assert that applicant has some burden of proving the patentability of the claimed invention over the cited art. However, it is black letter law that the examiner carries the

burden of establishing a *prima facie* case of obviousness. The examiner has failed to do so.

The examiner appears to rely on an unsupported “view” that the difference between a surface roughness of 1 Angstrom and the claimed surface roughness is not critical, and then ignores the difference in crafting the rejection. If the examiner has support for his “viewpoint”, the examiner is invited to provide it to applicant so that applicant may respond. Absent such support, the rejection must be withdrawn.

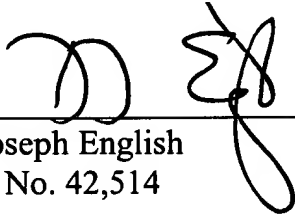
Applicant notes that the surface roughness is described as a “critical” factor in determining the performance of optical filters. (Specification at page 4, lines 1-2). Applicant further notes that a unique feature of the present invention is identified as the sub-angstrom surface roughness achieved by the present invention. The examiner’s “view” that a reduction in surface roughness by a factor of at least two over the prior art may be ignored is untenable.

The combination of references fails to disclose ALL claim limitations and thus the examine has not established a *prima facie* case of obviousness. Reconsideration and withdrawal of the obviousness rejections is solicited.

Examination and allowance of new Claim 17 is solicited. No new matter has been added.

A further and favorable action and allowance of all claims is solicited.

Respectfully submitted,

  
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